

**DEPARTMENT OF MENTAL HEALTH, MENTAL
RETARDATION AND SUBSTANCE ABUSE SERVICES**

**ADDENDUM TO BACKGROUND INVESTIGATION PROCEDURES
REQUIRED BY § 37.2-416 & 37.2-314 OF THE *CODE OF VIRGINIA***

REVISED: JUNE 2006

A. Changes in Background Investigation Procedures:

Basic instructions concerning background investigations are outlined in “Procedures for Conducting Background Investigations required by § 63.2-1726 of the *Code of Virginia* on Employees, Volunteers, and Contractual Service Providers Affiliated with Children’s Residential Facilities” dated January 19, 2006. Changes to those procedures made necessary by passage of § 37.2-416 of the *Code of Virginia* are outlined in this addendum.

Effective July 1, 1999, all Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) licensed providers are required to conduct criminal background checks on all applicants who accept employment in compensated direct consumer care positions as required by § 37.2-416 of the *Code of Virginia*, (formally 37.1-183.3 prior to October 1, 2005)

A direct consumer care position is described as any position with a job description that includes responsibility for treatment, case management, health, safety, development or well being of a consumer or immediately supervising a person in a position with such responsibility. Background investigations on **other than direct care employees** will continue to be conducted under § 63.2-1726 of the *Code of Virginia*.

Please note that one background investigation is required for each individual and the Background Investigation Unit will screen for both laws.

B. Background Investigations:

1. During the hiring process, private sector facilities should discuss with each individual the list of crimes used to screen the results of the Virginia State Police and FBI fingerprint investigations and the law and/or facility’s policy regarding use of an individual who receives a **“not eligible”** or **“cannot be determined”** letter.

Private sector facilities are notified of the individual’s status based on evaluation of the information received from the Virginia State Police and FBI. One of the following letters will be generated:

- a. **“Eligible”** means one of the following:
- Individual will not have any criminal record.
 - Individual will not have been convicted of any crime listed in the law.
 - Individual will not have been convicted of more than one misdemeanor assault and battery charge (a) within the past ten years or (b) committed in scope of direct consumer care position regardless of timeframe.
- b. **“Not eligible”** means that the individual has been convicted of one or more crimes listed in the state law and by law may not be employed or retained if already employed. If the individual; however, wishes to challenge the information contained in the record, the facility should follow the instructions outlined in the basic procedures package.
- c. **“Adequate information is not available to determine whether the applicant meets or does not meet the criteria”** means one of the following:
- The FBI determined the individual's fingerprints were unclassifiable and rejected them. The facility has either submitted a Facility Request to Discontinue Reprints or notified the Background Investigation Unit that the individual is no longer affiliated with the facility and new prints will not be submitted. This notice is needed to provide the facility documentation that it has complied with the state law.
 - The individual was, at some time, either charged with a crime listed in the state law or the Background Investigation Unit was unable to determine the nature of the arrest. The Background Investigation Unit has researched through all available state and local record-keeping systems and has not been able to determine whether the applicant was convicted of the crime. Adequate information to make a determination is not available when:
 - The disposition has not been reported by the court to the Virginia State Police/FBI.

- The record has been purged by the court.
 - The Background Investigation Unit is unable to comply with the court's requirements for researching its records and releasing the disposition. The individual may or may not have been convicted of the crime.
 - The Background Investigation Unit was unable to determine if a listed arrest/conviction is a screenable offense because of lack of information shown on the arrest history and inability to obtain clarifying information from courts and law enforcement agencies.
2. Public sector facilities should discuss with the individual both the law and the facility's policy regarding use of individuals who have criminal records. Public sector facilities are furnished the results of the Virginia State Police and FBI fingerprint checks.

C. Reason Fingerprinted Section of Fingerprint Cards:

Facilities should show either "Juvenile Facility Applicant - VA Code § 63.2-1726" or "Juvenile Facility Volunteer - VA Code § 63.2-1726" in the reason fingerprinted section for all background investigations requested.

Any questions regarding background investigation procedures may be directed to the Background Investigation Unit at 804-726-7099.